

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Owen Godshall	Team: Squad #10	CCRB Case #: 201702111	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/15/2017 1:15 AM	Location of Incident: Brooklyn Central Booking	Precinct: 84	18 Mo. SOL 9/15/2018	EO SOL 9/15/2018	
Date/Time CV Reported Wed, 03/15/2017 1:14 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 03/21/2017 11:26 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Derrick McIntosh	08849	937068	BKLN CT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Mohamed Makiz	10882	956868	071 PCT
2. POM Michael Rosario	04314	951178	071 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Derrick McIntosh	Discourtesy: Police Officer Derrick McIntosh acted discourteously toward § 87(2)(b)	
B.POM Derrick McIntosh	Abuse: Police Officer Derrick McIntosh threatened § 87(2)(b) with the use of force.	
C.POM Derrick McIntosh	Force: Police Officer Derrick McIntosh used physical force against § 87(2)(b)	

Case Summary

On March 15, 2017, Sgt. Abdurham Almontaser of the 71st Precinct filed this complaint with IAB via telephone on behalf of a prisoner, § 87(2)(b). On March 21, 2017, the complaint was forwarded to the CCRB via IAB log #2017-9635.

At approximately 1:15 a.m. on March 15, 2017, PO Michael Rosario and PO Mohammed Makiz of the 71st Precinct escorted a prisoner, § 87(2)(b) from § 87(2)(b) Hospital to Brooklyn Central Booking. PO Rosario brought § 87(2)(b) into the building while PO Makiz remained outside. § 87(2)(b) was brought before PO Derrick McIntosh of the Brooklyn Court Section. PO McIntosh told PO Rosario that he would have to return § 87(2)(b) to the hospital as he was in need of medication. § 87(2)(b) upset by this, spat on PO McIntosh's face.

PO Rosario called PO Makiz and told him to come to the entrance to Brooklyn Central Booking. When he arrived, PO Makiz and PO Rosario escorted § 87(2)(b) out of the building towards a prisoner van. § 87(2)(b) was in handcuffs and leg shackles at the time. As they proceeded, however, PO McIntosh approached § 87(2)(b). PO McIntosh attempted to spit on § 87(2)(b) (**Allegation A**). The saliva, however, made contact with PO Makiz instead. PO McIntosh told § 87(2)(b) "I'll see you when you get back" (**Allegation B**). PO McIntosh then kicked § 87(2)(b) on the back of his right knee and punched § 87(2)(b) on the back of his head (**Allegation C**). PO McIntosh walked back into Brooklyn Central Booking. PO Makiz and PO Rosario placed § 87(2)(b) in their van and drove him to the hospital.

The investigation was unable to obtain video footage from this incident. Sgt. Tanisha Jones of the Criminal Justice Bureau (CJB) Investigations Unit confirmed to the undersigned investigator that her unit is in possession of video footage that was taken from Brooklyn Central Booking that depicts the incident. The footage was requested, but to date, has not been provided to the CCRB.

This case is 110 days old as of July 9, 2017. It was delayed due to difficulties in contacting and obtaining testimony from § 87(2)(b).

Mediation, Civil and Criminal Histories

- This complaint was ineligible for mediation due to § 87(2)(b)'s arrest.
- A Notice of Claim request was submitted to the NYC Comptroller's Office on July 7, 2017. It will be included in the case file upon receipt.
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by or involving § 87(2)(b) (See Board Review #02: § 87(2)(b)'s CCRB History).
- PO McIntosh has been a member of service for twelve years and there are no substantiated CCRB allegations against him.
 - He has been the subject of seven allegations in four previous cases.
 - Two previous physical force allegations against him have been closed as exonerated and unsubstantiated.
 - These are the first discourtesy and threat of force allegations pleaded against him.

Potential Issues

- § 87(2)(b)'s address was obtained from his arrest report. Multiple telephone numbers were located for him via Lexis Nexis and CLEAR searches. Contact attempts were made to him between March 22, 2017 and April 26, 2017. During a telephone call on April 26, 2017, § 87(2)(b) provided updated contact information and scheduled an interview for May 5, 2017. He did not appear for this interview, and did not call ahead to cancel or reschedule. During a follow-up call on May 12, 2017, § 87(2)(b) stated that he was no longer interested in cooperating with the investigation, as he does not stand to benefit financially by participating. § 87(2)(b) was informed that he may contact the CCRB again should he change his mind.
- After § 87(2)(b) declined to participate with the investigation, the undersigned investigator consulted with Investigative Manager Carlmais Johnson and Chief of Investigations Winsome Thelwell. It was determined that since PO Makiz and PO Rosario had already provided sworn testimony regarding the allegations against PO McIntosh, the investigation would proceed without a sworn statement from § 87(2)(b).
- The investigation was unable to obtain video footage depicting the incident. A UF-49 unusual occurrence report was prepared regarding the incident by Captain Thomas Tierney of the CJB Investigations Unit (See Board Review #03: UF-49). The report stated that video footage had been retrieved from Brooklyn Central Booking that recorded this incident. During a telephone call on June 1, 2017, Sgt. Tanisha Jones of the CJB Investigations Unit confirmed that they are in possession of the video. On June 13, 2017, Sgt. Jones stated that the video would have to be requested via a Reznick request. A request was submitted later that day. To date, the video has not been received from the Criminal Justice Bureau Investigations Unit.

Findings and Recommendations

Allegation A –Discourtesy: Police Officer Derrick McIntosh acted discourteously toward

§ 87(2)(b)

It is undisputed that § 87(2)(b) spat on PO McIntosh's face inside of Brooklyn Central Booking. It is also undisputed that PO McIntosh later approached § 87(2)(b) outside of Brooklyn Central Booking and attempted to spit on him.

PO McIntosh was interviewed at the CCRB on July 3, 2017 (See Board Review #04: PO McIntosh's Statement). He confirmed that he attempted to spit on § 87(2)(b). He stated that he did so because he was angry at § 87(2)(b) for spitting on him earlier inside of Brooklyn Central Booking.

NYPD Patrol Guide procedure 203-09 states that officers must be courteous and respectful when interacting with members of the public (See Board Review #05: Legal Reference).

§ 87(2)(b), § 87(2)(g)

Allegation B –Abuse of Authority: Police Officer Derrick McIntosh threatened § 87(2)(b) with the use of force.

PO McIntosh stated that he and § 87(2)(b) “exchanged words” with each other after he gestured as if to hit § 87(2)(b). He did not recall what he and § 87(2)(b) said to each other, save that § 87(2)(b) told him at one point, “Fuck you.” PO McIntosh denied telling § 87(2)(b) “I’ll see you when you get back.” He denied telling § 87(2)(b) that he would take any actions towards him when § 87(2)(b) returned to Brooklyn Central Booking from the hospital. He denied telling § 87(2)(b) that he would use force against him. He denied threatening § 87(2)(b).

PO Makiz and PO Rosario were both interviewed by officers from the CJB Investigations Unit on March 15, 2017. As of July 7, 2017, the CJB Investigations Unit has not provided audio recordings of these interviews to the CCRB. Summaries of these interviews were included in the UF-49 report (See Board Review #03: UF-49). PO Makiz and PO Rosario were also interviewed at the CCRB on June 14, 2017 and June 19, 2017, respectively (See Board Review #06-07: MOS Statements).

PO Makiz stated in his interview with the CJB Investigations Unit that at some point during the incident, PO McIntosh told § 87(2)(b) “I’ll see you when you get back.” He also noted in his memo book entry that PO McIntosh threatened § 87(2)(b) during this incident. PO Makiz did not expand on the nature of this threat in his memo book entry (See Board Review #08: PO Makiz's Memo Book). During his CCRB interview, PO Makiz stated § 87(2)(b) and PO McIntosh started shouting at each other after PO McIntosh tried to spit on § 87(2)(b). PO Makiz did not recall what PO McIntosh said to § 87(2)(b) at that time. When asked about the threat mentioned in his memo book entry, PO Makiz stated that it likely referred to something that PO McIntosh stated during this exchange.

PO Rosario made no mention of PO McIntosh threatening § 87(2)(b) in any way during his statement to the CJB Investigations Unit. He stated in his memo book entry that PO McIntosh threatened § 87(2)(b) but he did not elaborate on the nature of this threat (See Board Review #09: PO Rosario's Memo Book). During his CCRB statement, PO Rosario stated that after § 87(2)(b) spat on McIntosh inside of Brooklyn Central Booking, he heard PO McIntosh tell § 87(2)(b) “I’ll

see you when you get back.” He did not recall PO McIntosh making any statements to § 87(2)(b) outside of the building.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation C –Force: Police Officer Derrick McIntosh used physical force against § 87(2)(b)

It is undisputed that at the time that PO McIntosh interacted with § 87(2)(b) outside of Brooklyn Central Booking, PO Makiz and PO Rosario were escorting § 87(2)(b) to a prisoner van. § 87(2)(b) was wearing handcuffs.

PO McIntosh did not recall if § 87(2)(b) was wearing leg shackles at the time. After he attempted to spit on § 87(2)(b) PO McIntosh gestured towards § 87(2)(b) as if he was trying to strike him. He described this gesture as quickly jerking his torso towards § 87(2)(b). He did not make contact with § 87(2)(b) while making this gesture. PO McIntosh explained that he did this in order to intimidate § 87(2)(b). He denied punching § 87(2)(b) on the back of the head or kicking § 87(2)(b) on the back of his knees. PO McIntosh denied striking § 87(2)(b) or otherwise using physical force against him. PO McIntosh walked away after gesturing towards § 87(2)(b). PO McIntosh prepared a Threat, Resistance and Injury Report regarding the interaction. In both the printed and handwritten copies of the report, PO McIntosh denied that he used any force against § 87(2)(b) (See Board Review #10: TRI Reports).

PO Rosario’s § 87(2)(g). He stated that § 87(2)(b) was wearing leg shackles in addition to his handcuffs. After PO McIntosh attempted to spit on § 87(2)(b) he walked away, headed back towards Brooklyn Central Booking. About a minute later, PO McIntosh walked back towards § 87(2)(b) approaching from behind. PO McIntosh then kicked § 87(2)(b) on the back of his right knee. This caused § 87(2)(b)’s legs to buckle beneath him, but PO Rosario and PO Makiz were able to hold him up by his arms and prevent him from falling. PO McIntosh then punched § 87(2)(b) on the back of his head with a closed fist. PO McIntosh walked away after delivering these two blows to § 87(2)(b). PO Rosario did not observe any injuries to § 87(2)(b) after PO McIntosh struck him, but later heard § 87(2)(b) tell a doctor at § 87(2)(b) Hospital that he felt pain in his head.

§ 87(2)(g)

PO Makiz also stated that PO McIntosh walked away from § 87(2)(b) after attempting

to spit on him, and then approached § 87(2)(b) again to strike him. PO Makiz did not initially see PO McIntosh approach § 87(2)(b) this second time. He first noticed § 87(2)(b) stagger and fall to his knees. PO Makiz then turned around to see PO McIntosh standing immediately behind § 87(2)(b). PO Makiz had not seen what caused § 87(2)(b) to fall. In his memo book entry regarding the incident, PO Makiz wrote that PO McIntosh punched § 87(2)(b) in the back of the head (See Board Review #06: PO Makiz's Memo Book). In his statement to the CJB Investigations Unit, PO Makiz stated that he then saw one of PO McIntosh's hands near § 87(2)(b)'s head. He did not specify in that statement what PO McIntosh was doing with his hand. In his CCRB statement, PO Makiz stated that he saw PO McIntosh make a "gesture" towards § 87(2)(b)'s head with a closed fist. He then stated that he did not know if PO McIntosh used "force" against § 87(2)(b) while making this gesture. When specifically asked if PO McIntosh struck § 87(2)(b) however, PO Makiz replied, "Yes."

NYPD Patrol Guide procedure 221-01 states that officers may only use force when attempting to prevent harm to an individual, bringing a subject into custody, or preventing a subject from escaping custody. They must use the reasonable amount of force necessary to gain control of the subject (See Board Review #11: Legal Reference).

§ 87(2)(b), § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

§ 87(2)(b), § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g)
[REDACTED]
[REDACTED].

Squad:

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer:

Title/Signature

Print

Date